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~~NO. 96-1346~~

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MICHAEL BRYANT BRUMLEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondents

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S REPLY TO THE GOVERNMENT'S OPPOSITION

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PETITIONER'S REPLY TO THE GOVERNMENT'S OPPOSITION

During the course of this prosecution, both Brumley and the Government have maintained that the concept and scope of 18 U.S.C. § 1346 is an issue of significant importance.[1] The extent to which § 1346's plain language limits its scope and the external limitations on § 1346's application to the public sector imposed by the Constitution are uncertainties that need to be resolved by this Court in order to give needed direction to Congress, federal prosecutors and, most importantly, the affected public. To let stand a statute which gives a federal prosecutor the discretion to elevate public sector misdemeanor conduct which a state does not deem criminally fraudulent to a federal felony requires an extraordinary diminution of the Tenth Amendment. Extraordinary federal punishment for non-property related conduct by a public sector employee is particularly troubling when viewed in the context of parochial issues and state sovereignty. In today's charged atmosphere of single-issue politics, where accusations of ethical and/or criminal wrongdoing are routinely voiced, it is more important than ever that this Court define the scope of 18 U.S.C. § 1346 because of its potential to render a wide range of public sector conduct violative of federal law that, as here, traditionally had been solely regulated by state law. *Williams v. United States*, 458 U.S. 279, 290 (1982) (citing *United States v. Enmons*, 410 U.S. 396 (1973)); *United States v. Bass*, 404 U.S. 336 (1971). The Government's opposition to Brumley's petition belies its own real need for this Court to comprehensively address the scope and application of the Honest Service Doctrine in the public sector.

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[1] Government's Suggestion for Rehearing En Banc dated August 31, 1995, pg. iv.; and Government's Suggestion for Rehearing En Banc dated May 10, 1996, pg. 1.

§ 1346's Plain Language Internally Limits Its Scope To Circumstances Involving Property Rights

1. The Government's argument that courts have correctly construed that "another" as used in § 1346 includes the citizens of the State of Texas as victims of § 1346's scheme to defraud disregards the fact that these courts addressed § 1346 in circumstances that disclosed bribery and/or Hobbs Act conduct e.g. *United States v. Castro*, 89 F.3d 1443 (11th Cir. 1996). Opp. 7. Cases such as *Castro* stand only for the proposition that the mail and wire fraud statutes are constitutional as applied to public sector deprivation of honest services conduct involving the loss or gain of tangible and intangible property rights. In light of this Court's holding in *Carpenter*, mail and wire fraud do not even require § 1346 in order to reach conduct evidenced in cases like *Castro*. *Carpenter v. United States*, 484 U.S. 19 (1987). Where circumstances disclose bribery, Hobbs Act, or other property directed misconduct in the public sector, the limitations which the Rule of Lenity would place on "another" as used in § 1346 are subsumed because the circumstances inherently disclose property being fraudulently gained or taken. *Brumley II* is the only authority addressing the scope of § 1346 in circumstances devoid of any property right. *United States v. Brumley*, 79 F.3d 1430 (5th Cir. 1996), Pet. App. 14a-38a. The dissent to the *en banc* opinion and *Brumley II* hold that § 1346's scope in the public sector is limited by its plain language and cannot extend the reach of the wire fraud statute to a public sector employee because "another" cannot be construed to include "citizens of the State of Texas." This construction is logically sound because § 1341 and § 1343 are fraud crimes and frauds, in their traditional sense, cannot occur in absence of some property right being lost. Brumley argues that § 1346 can only reach the deprivation of the intangible right to honest services in the public sector where circumstances reveal that the services were fraudulently used for personal gain or harm to a property right.

Public Sector Misconduct Is Not Necessarily Criminally Fraudulent

2. The Government wrongly assumes that § 1346 extends the reach of wire fraud to any job-related statutory violation by a public sector employee. *En banc* Opinion, Pet. App. 54a; Opp. at 7. The *en banc* court and the Government fail to recognize a distinction between public sector misconduct which violates a benign state misdemeanor statute and conduct that intends criminal gain or harm. Contrary to the Government's opposition, all § 1346 case law clearly discloses an intended gain or harm connected with a job activity.[2]

How A Public Sector Employee Rendered Services Should Not Be A Federal Issue

3. The Government relies on the court's findings that Brumley caused IAB documents to be transferred to Cely, that he showed favoritism to Cely, and that Brumley notified Cely of the IAB investigation of Cely as proof that Brumley's "service" was less than expected. Opp. at 9, fn.3. These acts, retrospectively characterized as favoritism and fraudulent conduct, were exactly what Brumley's

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[2] *United States v. Paradies*, 98 F.3d 1266 (11th Cir. 1996), *cert. pending*, No. 96-1346 (conflict of interest dealing which resulted in commissions); *see also*, *United States v. Gray*, 96 F.3d 769 (5th Cir. 1996); *United States v. Grandmaison*, 77 F.3d 555, 566 (1st Cir. 1996); *United States v. Waymer*, 55 F.3d 564, 568 n.3 (11th Cir. 1995), *cert. denied*, 116 S.Ct. 1350 (1996); *United States v. DeFries*, 43 F.3d 707, 709 n.1 (D.C. Cir. 1995); *United States v. Dischner*, 974 F.2d 1502, 1518 n.16 (9th Cir. 1992), *cert. denied*, 507 U.S. 923 (1993); and *United States v. Martinez*, 905 F.2d 709, 715 (3d Cir.), *cert. denied*, 498 U.S. 1017 (1990) as examples of § 1346 application to situations involving tangible and intangible property rights connected to a violation of a job duty. Pre-§ 1346 Honest Service Doctrine case law also indicated that intended harm was a requisite for the application of the Doctrine. *United States v. Ballard*, 663 F.2d 534 (5th Cir. 1981), *modified*, 680 F.2d 352 (5th Cir. 1982, Unit B).

job required him to do.[3] Whether "favoritism" ever exists is an extremely subjective inquiry; but, given that the instant case afforded the Government ample opportunity to put forward any insurance company, any injured claimant, any health care provider, or any state official claiming that Brumley's "services" were less than the state required and none were forthcoming, the Government's claim that services were deprived should be foreclosed. Whether Brumley advised Cely how to keep claim settlement records or whether Brumley caused public lease specifications to be sent to Cely are surely not of any federal criminal concern. Had either of these activities concealed a gain or caused anyone a loss, then because of *Carpenter* § 1343 would apply without the necessity of § 1346. In the instant case, the Government simply characterized a public sector employee's day-to-day activities as criminal. This mischaracterization brings into question the permissible limits of the federal government delving into how a public sector employee conducts his duties in circumstances where the conduct does not involve the fraudulent use of the mail or wires. Absent a nexus linking the job activity to the unlawful gain, the Tenth Amendment implications make the exercise of federal jurisdiction over public sector employees impermissible and unwarranted.

A State Employee's Conduct Should Not Be Fraudulent Under Federal Law If It Is Not Fraudulent Under State Law

4. The Government urges that Brumley's federal conviction is consistent with the Tenth Amendment because the Court of Appeals found that Brumley was a criminal under state law. Opp. 12. Brumley concedes that he is guilty of violating a state misdemeanor statute, but under the laws of the State of Texas Brumley is not guilty

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[3] Brumley again points out that the Government continues to insinuate that Brumley committed bribery or Hobbs Act conduct. Opp. 8-9. The Superseding Indictment did not charge Brumley with bribery or Hobbs Act conduct. App. 1a-23a; *see also*, Pet. 5, 13-14.

of fraudulent conduct. It is inconsistent with the Tenth Amendment for the federal government to deem a public sector employee's conduct fraudulent in circumstances where the state does not deem his conduct fraudulent. The fact that Brumley's purely intrastate conduct was not criminally fraudulent under state law means that the mail or wires were not used to perpetrate any fraud. Congress' Commerce Clause power to pass laws which override state mandated punishments for public sector employee misconduct should be externally limited by the Tenth Amendment in circumstances where the federal interest is remote and irrelevant. Here, the remoteness of federal jurisdiction is indicated when the unanimous panel vacated the wire fraud convictions because there was no evidence that Brumley even knew he was involving interstate wires.[4] *United States v. Brumley*, 59 F.3d 517 (5th Cir. 1995), Pet. App. 1a-13a. *Brumley I* should signal this Court that in the instant case the Tenth Amendment and the Commerce Clause are in tension because here the extent to which Texas chooses to punish its employees dramatically conflicts with a Commerce Clause based criminal statute's range of punishment.

The Superseding Indictment Did Not Charge That Brumley Received Money Because He Was A State Employee

5. The Government does not dispute that the Superseding Indictment only charges Brumley with violating rules and misdemeanor law which direct him not to borrow, fraternize, or request help from attorneys who practice before the IAB. *See* Superseding Indictment, App. 1a-23a. As previously pointed out, § 36.08, Tex. Penal Code is a misdemeanor which complements the IAB ethics code and neither require a fraudulent *mens rea*. *Compare* § 36.02, Tex. Penal Code (bribery). App. 24a-26a. The Superseding Indictment did not charge that Brumley received any money because he was a state employee, and there is no proof that any person

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[4] The *Brumley I* panel included Judge Wood from the Seventh Circuit.

"loaned" money to Brumley because he was a state employee. Had this been a bribery or Hobbs Act indictment, objective proof of criminal activity would have been required and the issue of subjectively characterizing Brumley's receipt of the money as fraudulent would not exist in a vacuum; but since it was not, this issue needs to be addressed by this Court. The only other circuit which has addressed this issue strongly indicates that conduct involving a fraudulent *mens rea* is required to underpin a § 1346 corruption case against a state official. *United States v. Sawyer*, 85 F.3d 713, 728-729 (1st Cir. 1996). Since the Superseding Indictment did not charge any conduct requiring a fraudulent *mens rea*, the Fifth Circuit erred in affirming the conviction on a theory not alleged in the indictment. *McCormick v. United States*, 500 U.S. 257 (1991); *United States v. Sutherland*, 665 F.2d 1181 (5th Cir. 1981), *cert. denied*, 455 U.S. 949 (1982).

This Court Needs To Revisit The Honest Service Doctrine

6. In *McNally v. United States* this Court held that the mail and wire fraud statutes were limited by their literal wording. *McNally v. United States*, 483 U.S. 350 (1987). When this Court granted certiorari in *McNally*, all circuits were inconsistently and unevenly expanding the Honest Service Doctrine. The enactment of the minimally worded § 1346 has done nothing to alleviate the uneven expansion of honest services law in the public and private sectors. The Fifth Circuit's holding in *Brumley* should occasion this Court to revisit the concept and scope of the Honest Service Doctrine as now codified in 18 U.S.C. § 1346.

CONCLUSION

The petition for writ of certiorari should be granted as to the questions presented.

Respectfully submitted,

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APPENDIX A

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. 1:93-CR-110-1
	§	
MICHAEL BRYANT BRUMLEY	§	

SUPERSEDING INDICTMENT

THE UNITED STATES GRAND JURY CHARGES:

A. INTRODUCTION

1. **MICHAEL BRYANT BRUMLEY,** Defendant herein, began serving as a Prehearing Examiner for the Texas Industrial Accident Board (IAB) on or about July 1, 1976, and remained in that position until he became a Regional Director on or about June 1, 1988.

2. While serving as a Prehearing Examiner and Regional Director of the Industrial Accident Board, **MICHAEL BRYANT BRUMLEY,** (sometimes referred to as **"BRUMLEY"** herein), had occasion to preside over workers' compensation claims and cases in the Southeast Texas Region, including but not limited to the counties of Anderson, Angelina, Austin, Brazoria,

Brazos, Burleson, Chambers, Cherokee, Fort Bend, Freestone, Galveston, Grimes, Hardin, Houston, Jasper, Jefferson, Leon, Liberty, Limestone, Madison, Montgomery, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Walker, Waller, and Washington.

3. As a part of his duties, **BRUMLEY** was authorized to review claims of "on the job injuries" made by claimants under the provisions of Texas Workers' Compensation Law, generally found in Articles 8306 through 8390h of Vernon's Annotated Civil Statutes.

4. **BRUMLEY,** when serving as a Prehearing Examiner, or when serving in that role while holding the position of Regional Director, reviewed claims, made findings and recommendations for the Industrial Accident Board (IAB), resolved medical payment disputes, reviewed and approved Compromise Settlement Agreements (CSA's), reviewed and approved attorneys' fees, scheduled and rescheduled prehearing conferences, was responsible for enforcing IAB rules at the prehearing conference level, and was responsible for identifying any frauds on the IAB or violations of IAB rules apparent to an experienced hearing examiner.

5. As an employee of the citizens of the State of Texas, **MICHAEL BRYANT BRUMLEY** was obligated to follow the laws of the State of Texas, the rules and standards of conduct of the Texas Industrial Accident Board (later known as the Texas Workers' Compensation Commission, "TWCC"), and to provide the public, claimants, and insurance companies, the intangible right of good and honest service.

6. The Industrial Accident Board (IAB) functioned under statutes and a system commonly referred to as "old law cases" through 1989-90, when the Texas Legislature radically modified the workers' compensation claims process, to include a substan-

tial change or diminishment of the role of attorneys in the claims process. The amended law created what are commonly referred to as "new law cases."

7. Under the "old law," the Industrial Accident Board interacted primarily with three groups of individuals or companies:

(a) Workers' compensation claimants;

(b) Attorneys at law representing many claimants; and,

(c) Insurance companies providing coverage for workers' compensation claims for employers, including the carriers' representatives, who were at times attorneys at law.

Additionally, medical care providers and employers had a role in the workers' compensation system.

8. The attorneys at law representing workers' compensation claimants are commonly referred to as "plaintiffs' lawyers," "the plaintiffs' bar," or at times "personal injury attorneys."

9. The insurance companies insuring employers on IAB matters are commonly referred to as "carriers." Attorneys representing insurance companies are commonly referred to as "insurance defense lawyers" or "the insurance defense bar."

10. As a State employee, **BRUMLEY** had occasion to meet numerous members of "the plaintiffs' bar, " and numerous insurance carrier representatives, sometimes including members of "the insurance defense bar."

11. On or about August 15, 1990, at or near the time when the "new law" went into effect, the Texas Industrial Accident Board was being reorganized into the Texas Workers' Compensation Commission (TWCC), and **MICHAEL BRYANT BRUMLEY** was promoted to Regional Associate Director of the TWCC.

12. Prior to this time, **BRUMLEY** resided in the Beaumont, Texas, area; however, upon his promotion to Regional Associate Director, **BRUMLEY** moved to The Woodlands, near Houston, Texas. **BRUMLEY'S** promotion included a transfer to the TWCC Regional Office in Houston, Texas.

13. After 1991, the TWCC still handled "old law cases" for claims which involved injuries or illnesses prior to the effective date of the amendments described above.

14. As Regional Associate Director, **BRUMLEY** continued to have responsibility for "old law claims" in most of the counties mentioned in Paragraph 2 above, as well as other counties in his region of responsibility. He was also responsible for identifying attorneys and insurance carriers who failed to follow TWCC or IAB rules and regulations.

15. **BRUMLEY,** at all times during his employment with the IAB and TWCC, had knowledge of sensitive information, including unrepresented claimants, allegations of wrongful conduct made by claimants against their attorneys, as well as other important compensation process matters. Additionally, when claimants attended prehearing conferences without the benefit of counsel, the Prehearing Examiner was frequently asked to refer unrepresented claimants to attorneys. **BRUMLEY** was frequently in such a referral position.

16. During the time period described above, **MICHAEL BRYANT BRUMLEY** served a term on the City of Beaumont Planning and Zoning Commission. After this term on the Planning and Zoning Commission, **BRUMLEY** was elected to the City Council of Beaumont, Texas, and in effect, held two (2) distinct position of public trust—IAB employee and City Councilperson.

17. During this period of time described in the preceding paragraphs, **BRUMLEY** began to expend more funds than his family income, including the use of funds to support a lifestyle

inconsistent with the amount of his family income.

18. As an example of the conduct described in Paragraph 17, **MICHAEL BRYANT BRUMLEY,** began to financially support activities associated with an extramarital affair he maintained with a fellow employee. He also used State funds to further this relationship. **BRUMLEY** desired to further this relationship, therefore he provided improper "inside information" to this employee in order to enhance her chances of promotion with the TWCC. **BRUMLEY** accomplished this improper and dishonest conduct for the purpose of furthering his relationship with the female co-employee, and at the expense of other TWCC employees who were qualified for the position. Portions of the paperwork associated with her promotion and documents associated with the improper use of State funds were sent through the United States mails.

19. **BRUMLEY's** need for income and cash were enhanced by poor business investments he participated in, including a parking lot/street sweeping business in Beaumont, Texas.

20. Holding multiple positions of trust during this period—State employee, Planning and Zoning Commissioner, and City Councilperson—**BRUMLEY** knew he possessed positions vesting him with authority to influence and affect the lives of other persons.

21. JOHN M. CELY, was during the period described in this Introduction, a Attorney at Law in Texas, whose practice primarily can be described as a "plaintiffs' practice," representing large numbers of workers' compensation claimants.

22. Each of the attorneys referred to in **Section B** herein can be generally characterized as "plaintiffs' lawyers" or members of "the plaintiffs' bar" as a result of the nature of their law practice.

23. In order to avoid the naming of attorneys not charged with criminal conduct herein or elsewhere in this matter, the attorneys referred to herein will be identified as "Attorney Number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 or 11," save and except JOHN M. CELY, who was a co-conspirator with **BRUMLEY** not indicted in this same case.

B. ADDITIONAL RELEVANT FACTS

Relevant to all or portions of this Indictment are the following facts:

1. **MICHAEL BRYANT BRUMLEY** began as early as 1982 approaching members of "the plaintiffs' bar," who were required to appear before **BRUMLEY** in his role as Prehearing Examiner, seeking loans, loan arrangements or other benefits from these attorneys;

2. These attorneys were in the posture of knowing that **MICHAEL BRYANT BRUMLEY** held a position which could affect the manner in which their practice of workers' compensation law developed and/or progressed before the IAB or TWCC;

3. **BRUMLEY** knew the solicitation of funds, loans or other benefits from attorneys practicing before him created a conflict of interest, and was a violation of IAB and TWCC policy, as well as Texas law;

4. During the period described, **BRUMLEY** had poor personal credit ratings, and knew that his credit ratings with lending institutions were not only poor, but worsening as time progressed.

5. In the time period 1982-83, **BRUMLEY** approached Attorney Number 1 and requested that he assist **BRUMLEY** in obtaining a loan at a Beaumont area financial institution which had a relationship with Attorney Number 1. The lawyer made the introduction of **BRUMLEY** to an officer of the financial insti-

tution. **BRUMLEY** then borrowed approximately $1,000.00 from the institution. In the time thereafter, **BRUMLEY** defaulted on the loan and was told he needed to obtain the funds to repay the loan, since savings and loan examiners had questioned the failure of **BRUMLEY** to pay off the loan. **BRUMLEY** asked Attorney Number 1 if he could assist **BRUMLEY** in locating another institution where a loan could be obtained to repay the loan described in the preceding sentences of this paragraph. In other words, **BRUMLEY** wanted to substitute one loan for another loan, again through the assistance of Attorney Number 1. Attorney Number 1 thereafter called Attorney Number 2 and inquired if the lending institution Attorney Number 2 represented could loan **BRUMLEY** the money.

6. Attorney Number 2 contacted a lending institution outside the Beaumont, Texas, area where Attorney Number 2 knew the bank personnel, and arranged for **BRUMLEY** to pursue a loan. After the bank officer met with **BRUMLEY**, he called Attorney Number 2 and stated that **BRUMLEY's** credit was so poor that the bank could not loan **BRUMLEY** the funds without a guarantor. Attorney Number 2 guaranteed the note on behalf of **BRUMLEY**, and the loan was made, with the proceeds being used to pay-off the first loan referred to in Paragraph Number 5. This occurred on or about September 17, 1985.

7. Once again, **BRUMLEY** defaulted on the loan, failing to make substantial payments. Attorney Number 2 was required to pay off the loan he had guaranteed, and payment was made on or about August 25, 1986, with the sum of $1,839.51 being paid by Attorney Number 2. Attorney Number 2 never collected the sums from **BRUMLEY** which Attorney Number 2 paid for the benefit of **BRUMLEY.**

8. On or about a date in July or August of 1985, **MICHAEL BRYANT BRUMLEY** contacted Attorney Number 3 and stated that **BRUMLEY's** family would be with him in the

Lufkin, Texas, area while **BRUMLEY** handled Prehearing Conferences for the State of Texas. **BRUMLEY** further stated that he wanted to see if he could use Attorney Number 3's membership at Crown Colony Country Club, so that **BRUMLEY's** daughters could swim during their stay in Lufkin. At this time, **BRUMLEY** knew Attorney Number 3 was required to appear before **BRUMLEY** for Prehearing Conferences. Attorney Number 3 authorized **BRUMLEY** to use the attorney's membership at Crown Colony Country Club in Lufkin, Texas. **BRUMLEY** charged approximately $324.42 in expenses to Attorney Number 3's membership card and failed to repay Attorney Number 3, and he did not offer to repay the Attorney for the expenditures. Attorney Number 3 paid the sum on behalf of **BRUMLEY** on or about September 11, 1985.

9. Approximately one year later, **BRUMLEY** again called Attorney Number 3 and made the same type of request as the one described in paragraph B-8. The attorney agreed and **BRUMLEY** charged $299.60 to the country club membership of Attorney Number 3. **BRUMLEY** never repaid that sum nor did he offer to repay the charges. Attorney Number 3 paid $299.60 on behalf of **BRUMLEY** on or about August 29, 1986. In both instances the attorney was required to pay the country club expenses.

10. On or about October 9, 1986, after having charged a total of $624.02 to Attorney Number 3's country club account, and having failed to reimburse the attorney for those charges, **BRUMLEY** approached the same attorney and asked for a personal loan. Attorney Number 3 prepared a written note which was signed by **MICHAEL BRYANT BRUMLEY** in the principal amount of $500.00, accruing interest at the rate of ten percent (10%) per annum. The sum was paid to **BRUMLEY** by check number 5506 on the account of Attorney Number 3 and **BRUMLEY** failed to repay any portion of the loan. The attorney did not demand payment, and as time passed, the attorney discovered the loan was a violation of IAB rules and

never made any effort to collect the sums.

11. Beginning in 1984, **BRUMLEY** began approaching Attorney Number 4, who practiced law in Beaumont, Texas, requesting loans or assistance with obtaining bank loans. This attorney practiced before the IAB while **BRUMLEY** was a Prehearing Examiner. Attorney Number 4 and **BRUMLEY** also developed a social friendship. Each time **BRUMLEY** approached Attorney Number 4 for money, **BRUMLEY** provided some financial excuse which rationalized his "need" for the loan. **BRUMLEY** provided excuses such as car repairs, home repairs, or illness or a death in his or his wife's family. Thereafter, Attorney Number 4 made or arranged for loans on or about the following dates for **BRUMLEY**, and in the following amounts:

Date	**Amount**
May 19,1987	$ 1,390.00
November 12, 1987	$ 800.00
February 19, 1988	$ 1,500.00
August 18, 1988	$ 450.00
TOTAL	$ 4,140.00

These loans listed above were never repaid by **BRUMLEY** to Attorney Number 4.

12. On or about a date in December of 1987 or early January, 1988, **BRUMLEY** approached Attorney Number 4 for a loan, and Attorney Number 4 counseled **BRUMLEY** about his lifestyle and lack of financial stewardship. Attorney Number 4 referred **BRUMLEY** to a bank in Beaumont, Texas, thinking **BRUMLEY** would feel a greater obligation to repay a lending institution than an individual. When the bank officer reviewed the credit of **BRUMLEY**, he required a guaranty or co-signature by Attorney Number 4. The attorney instructed the bank not to notify **BRUMLEY** of the guaranty arrangement, in the hope that **BRUMLEY** would not default on the loan to a finan-

cial institution, if he thought he was the sole responsible party. **BRUMLEY** paid a portion of the loan balance, but defaulted on the loan, which caused Attorney Number 4 to be required to pay the balance of approximately $747.60.

13. In August of 1987, several loans were renewed and one new loan was made by a bank in Jasper County, Texas. **BRUMLEY** had approached Attorneys 5 and 6 respectively, and requested them to arrange loans, and if necessary to co-sign or guarantee loans for **BRUMLEY**. At that time, at least one, if not both of these attorneys or members of their firms were, like other attorneys mentioned above, required to practice before **BRUMLEY** at the Industrial Accident Board when they represented workers' compensation claimants. When **BRUMLEY** eventually defaulted on the loans, Attorneys 5 and 6 were required to pay a total of approximately $12,088.00 to repay **BRUMLEY's** debts, since they had guaranteed the loans to the bank. Attorney Number 5 made an effort to collect monies from **BRUMLEY**, and even requested **BRUMLEY** to pay a token amount each month, just to be in a position to be making some progress toward repayment of his debts. **BRUMLEY** failed to repay the debts, and stated to the bank that he would be inheriting portions of an estate in Many, Louisiana, which could pay the debts. This statement was false.

14. In or around 1987, **BRUMLEY** approached an attorney, hereinafter referred to as Attorney Number 7, from Nacogdoches, Texas. He requested a loan or assistance in obtaining a loan from a lending institution in Nacogdoches County, Texas. The attorney arranged for **BRUMLEY** to obtain the loan at a lending institution; however, the attorney's assurance of payment was required by the financial institution. **BRUMLEY** defaulted on the loan. The loan was paid off on or about March 14, 1988, after **BRUMLEY's** default. The sum paid was $2,100.00. Once again, Attorney Number 7 practiced in front of the IAB and **BRUMLEY**, who was a Prehearing Examiner.

15. Attorney Number 8 practiced law in the Beaumont, Texas area and was approached by **BRUMLEY** several times for personal loans. On or about a date in 1984, Attorney Number 8 was first approached, and **BRUMLEY** requested a personal loan either from the attorney, or assistance in obtaining a loan at the bank which the attorney served as a Director. Attorney Number 8 contacted the bank to assist **BRUMLEY** in obtaining a loan. Apparently failing to do a credit check, the bank funded a $1,000.00 loan to **BRUMLEY**, but once the bank examined **BRUMLEY's** credit, Attorney Number 8 was notified. Attorney Number 8 informed the bank he would "back the loan." **BRUMLEY** defaulted on the loan and Attorney Number 8 agreed to pay off the $1,000.00 loan. Thereafter, Attorney Number 8 obtained the signature of **BRUMLEY** on a promissory note to the attorney's firm, for $1,000.00, dated December 17, 1987. **BRUMLEY** never repaid the attorney or his firm. **BRUMLEY** continued to approach Attorney Number 8, and the last occasion he approached Attorney Number 8 was in or around a time in the late spring or summer of 1992.

16. In or around a date in 1988, **BRUMLEY** approached the law partner of Attorney Number 8 while that attorney (Number 8) was apparently out of town. **BRUMLEY** approached Attorney Number 9, and stated the City Council was taking a trip to the Far East, and that the City of Beaumont was paying for **BRUMLEY's** trip, but **BRUMLEY** desired to take his wife on the trip. Attorney Number 9 permitted **BRUMLEY** to sign a promissory note to the law firm for $1,500.00, and the monies were advanced to **BRUMLEY**. **BRUMLEY** never repaid the loan.

17. In the year 1987, **MICHAEL BRYANT BRUMLEY** approached JOHN M. CELY, an attorney in the Lufkin, Texas, area. **BRUMLEY** solicited funds from CELY and CELY consented to make payments, beginning by giving **BRUMLEY** sums of money, including payments from CELY's law firm. At that time, CELY had developed and was further developing a

large personal injury practice, with a large segment of the practice devoted to workers' compensation cases. CELY, and others associated in law practice with CELY, as well as CELY employees, were appearing before **BRUMLEY** in Prehearing Conferences.

18. Eventually, **BRUMLEY** and CELY began a process in which Cely had his employees deliver checks to the local Western Union agent, primarily making the checks payable to the H.C. Walker, Escrow Account. H.C. Walker is the Western Union agent in downtown Lufkin, Texas. The checks were generally made for an amount approximately $50.00 more than the desired wire transfer CELY would send to **BRUMLEY**. The $50.00 payments were the wire transfer fees for the service of conveying funds by electronic wire to a second location. All wire transfers from Western Union locations in Texas are communicated by an electronic network to a location outside the State of Texas. If the "pick-up" location is within Texas, the funds are then wired back into Texas, to the pick-up location.

19. JOHN M. CELY wired funds to various locations in Texas, where **MICHAEL BRYANT BRUMLEY** would pick up the funds. At times, **BRUMLEY** would convert the transferred funds to United States currency immediately, and at other times, he would wait to convert the funds at another location or deposit the transferred funds. Generally the funds were converted to cash.

20. More than seventy (70) wire transfers were made to **BRUMLEY** by CELY's employees, and specifically at the direction of JOHN M. CELY. Approximately $4,250.00 in wire transfer fees were incurred by CELY during a period beginning in 1987 to May of 1992, for the transfer of funds to **BRUMLEY**.

21. **MICHAEL BRYANT BRUMLEY** received approximately $86,730.00 in funds, cash, checks and wire transfers from CELY during the period July, 1987 through May of 1992. No written

"loan agreements" were executed between CELY and **BRUMLEY**, and neither could acknowledge any idea of how much had been paid to **BRUMLEY** by the latter part of 1992. **BRUMLEY** never repaid any sums to CELY.

22. In May of 1992, CELY authorized the delivery of a check to **BRUMLEY** for $400.00, which stated on its face "repay loan from earned fees."

23. During the period of 1987 through 1992, **BRUMLEY** showed favoritism to CELY in the manner in which CELY's cases were handled by the IAB procedurally. **BRUMLEY** ignored obvious or known IAB violations by CELY, and on one occasion even arranged for Prehearing Conferences to be held at CELY's law office, contrary to IAB practices. Other IAB personnel recognized the impropriety and cancelled the location of those hearings. **BRUMLEY** also improperly influenced lease negotiations for office space in the Lufkin, Texas area when the TWCC sought to open an office in Lufkin. In fact, **BRUMLEY** attempted to obtain the lease of TWCC space for the benefit of his co-conspirator, JOHN M. CELY.

24. In November of 1992, JOHN M CELY became aware of a Federal Investigation of him, as well as questions regarding his use of wire transfers. Within one (1) week after CELY acquired this knowledge, he instructed members of his staff to send wire transfers to **BRUMLEY** in their personal names, rather than the law firm name. This was true even though the funds were in actuality sent by CELY to **BRUMLEY**.

25. CELY did not maintain the integrity of client trust funds, and at times the funds of clients were so commingled that client trust funds were mixed with accounts in which payments were being made to **BRUMLEY** from commingled client trust funds and law firm operating monies.

26. During this period of 1987 through May of 1992, CELY frequently "operated" the law office "in absentia", simply calling in at times and giving employees instructions to wire **BRUMLEY** money, usually when **BRUMLEY** requested the monies.

27. While **BRUMLEY** continued to receive these funds from CELY on a regular basis, **BRUMLEY** continued to expend funds at an extraordinary rate for his actual State employee income.

28. In the spring/early summer of 1992, **BRUMLEY** approached Attorney Number 10 in the Beaumont, Texas, area. (**BRUMLEY** had previously asked Attorney Number 10 to assist him in arranging a loan at a financial institution in Jefferson County, Texas.) **BRUMLEY** produced a document which appeared to be an Internal Revenue Tax Lien, and stated he needed funds to pay off this Tax Lien. When the attorney agreed to assist him, a check was written for $2,100.00 and a promissory note produced. **BRUMLEY** signed the note but stated the IRS would seize any funds he might deposit, and insisted the check be converted to United States currency. **BRUMLEY** never repaid the loan.

29. During the period of 1992 until the present, **BRUMLEY** approached personal friends and associates for other loans, some of which were arranged, and some of which were not provided. However, from the eleven (11) attorneys listed in the preceding paragraphs (which includes Cely), **MICHAEL BRYANT BRUMLEY** received, and failed to repay, approximately $112,156.03 in funds (not counting all of the interest and penalties which have accrued).

30. On or about April 13, 1992, **MICHAEL BRYANT BRUMLEY** wrote to an attorney who was either required to appear before **BRUMLEY**, or members of that attorney's firm were required to appear before the TWCC, and asked the attorney to provide legal assistance to **BRUMLEY** on a traffic ticket

issued to **BRUMLEY** by the Texas Department of Public Safety. **BRUMLEY** made the request on official State of Texas letterhead stationery, and made no mention of paying a fee for this service.

COUNT 1

VIOLATION: 18 U.S.C. § 371 (Conspiracy)

PENALTY: A fine of not more than $250,000.00, imprisonment of not more than five (5) years, or both. A term of supervised release of not more than three (3) years. A special assessment of $50.00.

Paragraphs A-1 through 23 and B-1 though 30 of the Introduction to this Indictment are hereby realleged and incorporated for all necessary purposes as if fully set forth herein.

From on or about a date in 1987, the exact date unknown to the Grand Jury, and continuing to on or about a date in June of 1992, in the Eastern District of Texas and elsewhere, **MICHAEL BRYANT BRUMLEY,** Defendant herein, and JOHN M. CELY did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree together and with others, both known and unknown to the Grand Jury, to commit offenses against the United States, namely:

(a) to defraud by scheme and artifice the citizens of the State of Texas, including members of the Texas Industrial Accident Board (and its successor, the TWCC), an agency of the State of Texas, from receiving the intangible right to honest services, and in so doing conspired to use interstate wire and radio communications in violation of Title 18, United States Code, Sections 1343 and 1346, and

(b) to defraud by scheme and artifice the citizens of the State of Texas, including members of the Texas Industrial Accident Board (and its successor, the TWCC), an agency of the State of Texas, from receiving the intangible right to honest services, and in so doing conspired to use the United States mails in the scheme, in violation of Title 18, United States Code, Section 1341 and 1346.

MANNER AND MEANS TO ACCOMPLISH THE OBJECTS OF THE CONSPIRACY

1. It was a part of the conspiracy for **BRUMLEY** and CELY to commit the relevant alleged acts described in the Introduction to this Indictment.

2. It was part of the conspiracy that Defendant, **MICHAEL BRYANT BRUMLEY**, and co-conspirator JOHN M. CELY, having devised a scheme and artifice to defraud the citizens of Texas of honest service, specifically through the administration of the workers' compensation system, and acting with intent to defraud the State of Texas, arranged the transfer of critical IAB documents through the mails, at a time when **BRUMLEY** was failing to fulfill his proper obligations for the State in relation to certain workers' compensation administrative matters, claims and complaints;

3. It was a part of the conspiracy and scheme and artifice described in this Count, that JOHN M. CELY, or employees of Cely acting at his direction, would wire funds in interstate commerce to **MICHAEL BRYANT BRUMLEY**;

4. It was a further part of the conspiracy and scheme and artifice to use the names of third persons, beginning in November of 1991 and continuing through April of 1992, to transfer funds from CELY to **BRUMLEY**, in order to avoid the detection of the scheme;

5. It was a part of the conspiracy and scheme and artifice described in this count, that **MICHAEL BRYANT BRUMLEY** used the United States mails to send documents in furtherance of the conspiracy.

6. It was a further part of the scheme for **BRUMLEY** to use his official position as a State employee to attempt to provide favoritism to CELY and to use his public office for personal gain.

OVERT ACTS

In furtherance of the conspiracy, and to affect the objects thereof, the following overt acts, among others, were committed by or caused to be committed by one or more members of the conspiracy, in the Eastern District of Texas and elsewhere.

1. CELY, or employees acting at his direction, transferred funds to **BRUMLEY** by wire on more than seventy (70) occasions.

2. **BRUMLEY** violated IAB and TWCC regulations as well as State law by receiving benefits provided from attorneys to **BRUMLEY**, while the attorneys were practicing before the IAB or TWCC.

3. **BRUMLEY** notified CELY of information pertaining to an impending investigation/audit of CELY by the IAB.

4. The acts described in Paragraphs B-1 through 30 of the Introduction to this Indictment list many overt acts of the Defendant, which are hereby incorporated by reference.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-4

VIOLATION: 18 U.S.C. § 1343, and further defined by § 1346.
(Wire Fraud)

PENALTY: A fine of not more than $250,000.00; imprisonment of not more than five (5) years, or both. A term of supervised release not to exceed three (3) years. A special assessment of $50.00.

Paragraphs A-1 through 23 and B-1 through 30 of the Introduction to this Indictment are hereby realleged and incorporated as necessary, as if fully set forth herein.

On or about a date in 1982 and continuing until on or about a date in June of 1992, in the Eastern District of Texas and elsewhere, the Defendant, **MICHAEL BRYANT BRUMLEY**, having intentionally and willfully devised the scheme and artifice described in Paragraphs A-1 through 23 and B-1 through 30, to defraud and deprive the citizens of the State of Texas, including the Industrial Accident Board and its successor (the Texas Workers' Compensation Commission), a State agency, of the intangible right to good, faithful and honest service, and thereafter transmitted or caused to be transmitted by means of wire or radio communications in interstate commerce, electronic signals which communicated the transfer of funds by wire, for the purpose of executing such scheme and artifice:

Count	Date of Transfer by Cely	Check Number Used for Wire Payment	Amount (Less Wire Fee)	Location of Pickup by Brumley
2	8-4-89	3640556	$925.00	W.L. Pate Telegraph, Bmt., Texas.
3	9-15-89	3641187	$925.00	W.L. Pate Telegraph, Bmt., Texas.
4	1-3-92	1780834	$925.00	Mail Boxes Etc. #577 The Woodlands, Texas.

All in violation of Title 18, United States Code, Section 1343 and further defined by Section 1346.

COUNTS 5-7

VIOLATION: 18 U.S.C. § 1956 (a) (1) (A) (i) (Money Laundering)

PENALTY: A fine of not more than $500,000.00; imprisonment of not more than twenty (20) years, or both. A term of supervised release of not more than five (5) years. A special assessment of $50.00.

Paragraphs A-1 through 23 and B-1 through 30 of the Introduction of this Indictment are hereby realleged for all relevant purposes, and incorporated by reference as if fully set forth herein.

On or about the dates set forth below, in the Eastern District of Texas and elsewhere, the Defendant, **MICHAEL BRYANT BRUMLEY,** aided by JOHN M. CELY, did knowingly conduct and attempt to conduct the financial transactions involving monetary instruments and affecting interstate commerce, listed below which involved the proceeds of the specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, as described above in Counts 2, 3 and 4 respectively, with the intent to promote the carrying on of the specified unlawful activities, and that while conducting and attempting to conduct such financial transactions, to wit: The cashing of wire transfer funds or deposit of said funds at financial institutions as set forth below, affected interstate commerce and the Defendant knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity as described below:

Count	Date of Financial Transaction	Specified Unlawful Activity	Amount	Financial Institution
5	8-4-89	Count 2	$925.00	Beaumont Bank.
6	9-15-89	Count 3	$925.00	Beaumont Bank.
7	1-3-92	Count 4	$925.00	First City Bank The Woodlands, TX

All in violation of Title 18, United States Code, Section 1956 (a) (1) (A) (i).

COUNT 8

VIOLATION: Title 18 U.S.C. § 1014 (False Statement to a Financial Institution)

PENALTY: A fine of not more than $250,000.00; imprisonment of note more than two (2) years, or both. A term of supervised release of not more than one (1) year. A special assessment of $50.00.

1. In June of 1988, and at all times relevant herein, First Interstate Bank of Texas, N.A. of Beaumont, Texas, was a financial institution with deposits insured by the Federal Deposit Insurance Corporation (or its successor).

2. On or about a date in June of 1988, in the Eastern District of Texas, the Defendant, **MICHAEL BRYANT BRUMLEY**, did knowingly and intentionally make a material false statement to First Interstate Bank of Texas, N.A. for the purpose of influencing said financial institution to make the Defendant one or more loans or loan renewals, and did in fact obtain one or more loan renewals from said institution.

All in violation of Title 18, United States Code, Section 1014.

COUNT 9

VIOLATION: Title 18 U.S.C. § 1014 (False Statement to a Financial Institution)

PENALTY: A fine of not more than $250,000.00; imprisonment of note more than two (2) years, or both. A term of supervised release of not more than one (1) year. A special assessment of $50.00.

1. From on or about a date in September of 1986 until on or about a date in June of 1988, and at all times relevant herein, Parkdale Bank of Beaumont, Texas, was a financial institution with deposits insured by the Federal Deposit Insurance Corporation (or its successor).

2. From on or about a date in September 1986 until on or about a date in June 1988, in the Eastern District of Texas, the Defendant, **MICHAEL BRYANT BRUMLEY**, did knowingly and intentionally make material false statements to Parkdale Bank for the purpose of influencing said financial institution to make the Defendant one or more loans or loan renewals, and did in fact obtain loans and loan renewals from said institution.

All in violation of Title 18, United States Code, Section 1014.

A TRUE BILL,

/s/illegible
FOREMAN OF THE GRAND JURY

RUTH HARRIS YEAGER
UNITED STATES ATTORNEY

/s/illegible
Assistant United States Attorney

L. STUART PLATT
Assistant United States Attorney

CAROL K. JOHNSON
Assistant United States Attorney

APPENDIX B

Texas Penal Code § 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) An offense under this section is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p 3237, ch. 558, § 2, eff. Sept. 1, 1983.

For saving provisions see note set out under Section 1.07.

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

APPENDIX C

Texas Penal Code § 36.08.
Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, § 5, eff. Sept. 1, 1983.

For saving provisions see note set out under Section 1.07.

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.